In the

Supreme Court of the United States

October Term, 1955

No. 856

COMMONWEALTH OF VIRGINIA,

Respondent

v.

E. R. DAUGHERTY, JR., EUGENE STITH, WILLIAM B. STITH, AMBROSE STITH, SR., AMBROSE STITH, JR., JOHN M. PRICE, MARK STITH, LEROY PARHAM, CLEVELAND STITH AND CURTIS COLEMAN,

Petitioners

On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF AND APPENDIX FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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May 10, 1956

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On Petition for a Writ of Certiorari to the Supreme Court of Appeals of Virginia

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

The respondent, believing that the matters set forth herein will demonstrate the lack of jurisdiction of this Court and, further, the lack of substance in the questions presented by this petition, files this brief in opposition to the petitioners' petition for writ of certiorari. The respondent includes herein its opposition to the petition for writ of certiorari on the ground that the decision below was not rested on a federal question. The matters here relied upon are more particularly stated below.

I.

STATEMENT OF THE CASE AND THE PROCEEDINGS BELOW

On the morning of June 3, 1955, two groups of men approached the C. H. Perkinson Lumber Company in Brunswick, Virginia. One group came from the east along the Virginian Railroad tracks and the second group approached from the west along the tracks. The land of the Lumber Company consisted of some 25 acres, triangular in shape, and bounded by State Highway 712, State Highway 634, a private road, and the tracks of the Virginian Railroad.

A strike had commenced at the C. H. Perkinson Lumber Company on May 31st, 1955. The plant did not suspend operations on account of the strike, but continued with those employees who did not strike, supplemented, primarily, with additional help that normally worked in the woods cutting the timber and hauling the lumber to the plant (R. 207). The strike and accompanying picketing continued from its inception until after the time under consideration.

The two groups met opposite a box car on the railroad tracks and stopped (R. pp. 149, 183, 184). The whole groups were estimated at 30-35 (R. p. 113), 40-50 (R. pp. 118, 244), 35-40 (R. p. 250), 40 (R. p. 258), 45 or more (R. p. 150).

As they arrived at the box car three of the men started up the steps in the retaining wall separating the railroad tracks from the plant, but were apparently stopped by a signal from E. R. Daugherty (R. p. 51).

A few minutes later, another man in the group came between the retaining wall and the box car and called to Henry Cumbia, Superintendent, to "stop the mill" (R. 53).

The group of men "were mouthing up there at the men" (R. 53, 193, 212, 213). One of them was using profane language. "He hollered at the men and shouted 'You are no

Goddamed white man,' repeating this at least a dozen times" (R. 53).

The group of men were on the railroad tracks, standing close together at and around the box car, facing the plant. They were talking and hollering at the men working in the plant (R. 56, 72, 102, 182, 119, 120, 121, 135, 149).

After a while rocks were thrown at and into the plant and yard and, as a result, it was necessary to suspend work at the mill to protect the workers from being injured, and no further work was done in and about the plant until after complaint had been made to the Sheriff's Office and the officers arrived and ordered the men off of the railroad tracks (R. 124, 153, 159, 189, 204).

It appears that rocks were thrown intermittently over a period of time. One witness stated that they were falling for about an hour (R. 187). Grover Lee Cumbia saw 2 or 3, then saw 5 or 6, later saw 4 or 5. One of the last batch hit him on the ankle (R. 116). John Aldridge saw 4 or 5 that came from the direction of the railroad track (R. 186), and saw the rock hit Cumbia (R. 188).

One of the workers in the plant notified the foreman that rocks were being thrown, and upon going to investigate, he saw a rock coming straight at him. He jumped to get out of the way. It passed within 12 inches of John Aldridge's head, and was coming with such force it spattered when it hit a piece of iron, and a piece of it struck him on the leg (R. 151-2). It was thrown from the east end of the box car (R. 151). Henry Cumbia saw 3 or 4 rocks coming from over the east end of the retaining wall at the box car (R. 56).

Maynard Wilkinson saw the rock that hit E. G. Raney, and said it came from the railroad track (R. 142). Edward Cumbia was inside the box car loading lumber. He stated that several handfuls were thrown against the car and on top of it. This was done several times over a period of an

hour (R. 216). When one of the rocks came inside the car, Cumbia came out of the car (R. 216, 220).

Between the time the work in the mill was suspended and the arrival of the officers, the group of men remained on the tracks by the car, none left and no one else joined them (R. 40, 58). They remained, shouting at the workers and milling about (R. 153-4). When the officers arrived the group was standing on the tracks together near the box car, facing the mill (R. 244, 245, 349, 350, 259). When the first officer arrived, two or three of the group were seen dropping rocks on the railroad tracks (R. 259, 260). One of the men was standing in front of the crowd facing the mill with a flat piece of iron in his hand, an inch wide and a yard long (R. 254).

All of the petitioners were identified as being in the group of men causing the disturbance on June 3, 1955. The evidence as to the part each one of the petitioners took is as follows:

Curtis Coleman: When the officers arrived was standing in front of the crowd facing the mill, with an iron bar in his hand (R. 254).

E. R. Daugherty, Jr.: The trial court found that this petitioner was apparently the leader of the unruly group of men (R. 382). When the group came on the railroad tracks, Daugherty was in the front ranks (R. 148). He took a position at the west end of the box car and apparently stood there facing the mill until the officers arrived (R. 174, 202, 245, 250). He was standing within two feet of a striker who was cursing the workers, and in a position to see the rocks as they fell on the mill (R. 54, 191-2). When the officers arrived, Daugherty acted as spokesman for the crowd, and eventually gave the orders for the crowd to leave the tracks (R. 245, 250, 253, 298).

Leroy Parham was sitting to the west of the box car piling rocks (R. 52).

John M. Price cursed the workers at least a dozen times, "You all are no God damned white man" (R. 54), and said to Maynard Wilkinson as he dodged rocks, "No use for you to look so mean and mad about it" (R. 135).

Ambrose Stith, Jr., William B. Stith and Eugene Stith left the group on the tracks and started up the steps in the retaining wall towards the mill until called back by Daugherty. Eugene Stith was intoxicated at the time (R. 51, 130).

Ambrose Stith, Sr., walked between the box car and the mill and called to Henry Cumbia to "stop the mill" (R. 53).

Mark Stith was standing close to John M. Price giving signals and waving his arms while Price was cursing (R. 54, 58).

Cleveland Stith called from the group "you all come on here," and was at the box car hollering and pointing his fingers at the working men (R. 149, 174).

At the June, 1955, Term of the Circuit Court of Brunswick County, the Grand Jury returned an indictment against forty-two defendants, including the petitioners, charging them with four counts, as follows:

1. A felony: Throwing rocks at and against a building whereby the lives of the occupants were put in jeopardy in violation of Section 18-210 of the Code of Virginia.

2. A misdemeanor: Interfering with the persons therein named in the exercise of their right to work by the use of force, threats of violence and intimidation, contrary to Section 40-64 of the Code of Virginia.

3. A misdemeanor: Committing assaults and batteries by mob violence in violation of Section 18-38 of the Code of Virginia.

4. A misdemeanor: Unlawful picketing contrary to the provisions of Section 40-64 of the Code of Virginia. This last count charged the offense against only fourteen persons. This last count was *nolle prosequied* at the time the case was called for trial.

At the completion of the Commonwealth's presentation of its evidence, the court sustained a motion to strike all of the evidence as to the first count of the indictment on the ground that a lumber planing mill is not a building within the purview of Section 18-210 of the Code of Virginia.

Forty-one of the persons in the crowd were found guilty as charged in the second count of the indictment of violating Section 40-64 of the Code of Virginia (Appendix A). Fines were imposed upon thirty-one of the men; jail sentences and fines were imposed on the remaining ten men.

The judgment of the Circuit Court of Brunswick County is found in Appendix B to this brief. The ten petitioners then filed a petition for a writ of error and supersedeas in the Supreme Court of Appeals of Virginia. On January 18, 1956, the said Supreme Court of Appeals rejected said petition and refused said writ of error and supersedeas on the ground that the judgment of the trial court was plainly right (Appendix C). On the 13th day of April, 1956, the ten petitioners filed their petitions for a writ of certiorari in this Court.

II.

THE QUESTIONS PRESENTED

The sole question before this Honorable Court at the present time is: Does the Supreme Court of the United States have jurisdiction to review the decisions of the Circuit Court of Brunswick County and the Supreme Court of Appeals of Virginia, since such decisions rested on a non-federal ground?

III.

ARGUMENT

The Decision of the Circuit Court of Brunswick County Rested on a Non-Federal Ground, Therefore, This Honorable Court Does Not Have Jurisdiction to Hear This Case.

This Court will not review decision of State courts when their decisions rest on non-federal grounds. *Hedgebeth* v. *North Carolina*, 334 U. S. 806; *McCoy* v. *Shaw*, 277 U. S. 302, and *Howat* v. *Kansas*, 258 U. S. 181. Furthermore, this Court has repeatedly held it is without jurisdiction to review a judgment of a state court unless it clearly appears that the decision turned on a federal question, *Stembridge* v. *Georgia*, 343 U. S. 541, and *Copperweld Steel Co.* v. *Industrial Commission*, 324 U. S. 780.

The petitioners at no stage of the proceedings below or in their petition for a writ of certiorari allege that Section 40-64 of the Code of Virginia is unconstitutional. That section reads, in part, as follows:

> "No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person to induce or attempt to induce him to quit his employment or refrain from seeking employment." (Appendix A)

The facts are that this unruly group of men did curse the workers remaining on the job and did throw rocks at the workers, striking at least two of the workers, and did not cease these unlawful activities until the mill was shut down.

This plainly constituted a violation of the Virginia statute. The evidence in the Circuit Court supported the find-

ings of fact by the court that all ten of the petitioners were members of the unruly mob and that all of them loaned their support and encouragement to the lawless acts of intimidation and violence committed by some members of the mob.

The applicable law of Virginia, which has been reaffirmed by the Supreme Court of Appeals of Virginia in many cases, is stated in *Brown* v. *Commonwealth*, 130 Va. 733, 736, 107 S. E. 809, 810, 16 A. L. R. 1039, as follows:

> "'A principal in the second degree is one not the perpetrator, but present, aiding and abetting the act done, or keeping watch or guard at some convenient distance.' Minor's Synopsis Crim. Law, page 11. See also *Horton's Case*, 99 Va. 848, 38 S. E. 184.
>
> "'Every person who is present at the commission of a trespass, incouraging or inciting the same by words, gestures, looks or signs, or who in any way, or by any means, countenances or approves the same, is, in law, assumed to be an aider and abettor, and is liable as principal.' Plaintiff's Instr. No. 1 in *Daingerfield* v. *Thompson*, 33 Gratt. (74 Va.) 136, 148, 36 Am. Rep. 783, approved by this Court as law.
>
> "Mere presence when a crime is committed is, of course, not sufficient to render one guilty as an aider or abettor. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. *Kemp's Case*, 80 Va. 443, 450. But whether a person does in fact aid or abet another in the commission of a crime is a question which may be determined by circumstances as well as by direct evidence." See also *Foster* v. *Commonwealth*, 179 Va. 96, 18 S. E. 2d 314; *James* v. *Commonwealth*, 178 Va. 28, 16 S. E. 2d 296; *Hurd* v. *Commonwealth*, 159 Va. 880, 165 S. E. 536; *Hodge* v. *Winchester*, 153 Va. 904, 150 S. E. 392; *Boggs* v. *Commonwealth*, 153 Va. 828, 149 S. E. 445; *Shiflett* v. *Commonwealth*, 151 Va. 556, 145 S. E. 336.

Every person who is present lending countenance, aiding or abetting another in the commission of an offense, is liable to the same punishment as if he had actually committed the offense. In misdemeanor cases there are no accessories, but all participants in the crime are principals. *Hodge* v. *Winchester, supra; Foster* v. *Commonwealth, supra; Wooden* v. *Commonwealth*, 117 Va. 930, 86 S. E. 305; *Watts* v. *Commonwealth*, 99 Va. 872, 880, 39 S. E. 706. In felony cases such accessory is a principal in the second degree but is tried and punished as if a principal in the first degree. Section 18-3, Code of Virginia. Therefore, unless otherwise stated, if a statute makes an act criminal, it imposes on all persons who are present purposely giving aid and comfort to the actual wrongdoer criminal responsibility equal to that of the wrongdoer. *Adkins* v. *Commonwealth*, 175 Va. 590, 9 S. E. 2d 349; *Rasnake* v. *Commonwealth*, 135 Va. 677, 115 S. E. 543; *Wooden* v. *Commonwealth, supra.*

If there is concert of action with the resulting crime one of its incidental probable consequences, then whether such crime was originally contemplated or not, all who in any way participate in bringing it about are equally responsible and bound by the acts of every other person connected with the consummation of the resulting crime. The question of whether the crime is the natural and probable result of the intended wrongful act is one for the jury or trial judge. *Spradlin* v. *Commonwealth*, 195 Va. 523, 79 S. E. 2d 607; *Hurd* v. *Commonwealth, supra; Boggs* v. *Commonwealth, supra; Brown* v. *Commonwealth, supra.*

In *United States* v. *Peoni*, 100 F. 2d 401, 402, Judge Learned Hand said:

> "It will be observed that all these definitions have nothing whatever to do with the probability that the forbidden result would follow upon the accessory's con-

duct; and that they all demand that he in some sort associate himself with the venture, that he participate in it as in something that he wishes to bring about, that he seek by action to make it succeed. All the words used —even the most colorless, 'abet'—carry an implication of purposive attitude towards it."

In the instant case, this mob of men came to the C. H. Perkinson, Inc., Mill for one purpose, to persuade the workers to leave the mill and thereby close down the mill. This point is discussed by the trial court in its opinion, and the respondent would like to quote a portion of that opinion which it feels covers this question very adequately.

"They say they were there solely for the purpose of advertising to the railroad workers who might be members of the union also and gain their sympathy.

"Let us see whether that was the purpose. When they got down there some of the people started up to the mill. One of them, Ambrose Stith, Sr., hollered to Mr. Cumbia, the Superintendent there, to shut the mill down, or stop the mill, or words to that effect. Does that advertise to the railroad employees that they were on strike? Ambrose Stith, Jr., started up the steps in the retaining wall toward the mill. Another one, Price, was waving the strikers on towards him. Was that to advertise to the railroad employees? Obviously it was a plan designed to stop the mill. They were determined to stop it, and they went and pursued their course of action until they did stop it.

"One of them, Cleveland Price, called to the men to come down, come on here, trying to get them to come out.

"James M. Price, while standing not more than two feet from E. R. Daugherty, Jr., John M. Price, and looking toward the men working at the mill said, and there is no use for me to repeat the vile language, but you GD - - - he said 'You all ain't no GD white man.'

"What was the purpose? Who was he talking to? Men on the train? There wasn't any train there.

"Then rocks were thrown. Some were thrown from the east end of the car, according to the testimony, but mostly from the west. Nobody could see who threw the rocks, but they came out of the crowd. They came from that direction.

"There were rocks on the railroad, and the men were down on the railroad, at least two persons were struck by rocks. One of them was struck directly and the other one by a rock that hit some metal piece or something and broke. Not any serious damage done to any body, fortunately. But nevertheless it was a resort to violence, to accomplish their purpose.

"No one in the crowd turned off and left and went away because it was getting too rough. Nobody turned and went away and said 'You all are getting too rough here, I am not going to be a party to this.' They all stayed.

"This action stopped as soon as the mill shut down, everything became quiet and peaceful, as far as an incident of this kind was concerned. They didn't go away, though. Was this waiting for a train? They didn't want the mill to start up again. Was it interfering with the work? Was it intimidation? I cannot see how it could be anything else.

"40 of those present have been identified. All of them were on strike either from that mill or from other mills. They all belonged to the Union, which was perfectly all right. They all had a common interest in the outcome of the strike. Some of them were carried there by Mr. Daugherty from another mill. They were all grouped together, plainly I think they were there for a common purpose. The purpose was to induce those at the mill to quit their work by threats, insulting language, by throwing rocks and by menacing gestures. Cleveland Price was shaking his fingers at them up there. The most flagrant violation of that particular statute which you could hardly imagine.

"Some have been identified who committed certain overt acts. But all others present were plainly aiding, abetting, counseling, advising, consumating and consenting to the unlawful acts." (R. 377-380)

In the instant case, as in the case of *Cole* v. *Arkansas*, 338 U. S. 345, the trial court correctly construed the State statute involved as not in any way prohibiting peaceful picketing. The Court held:

"As I have said before I do not look upon with disfavor at all on labor organizing to better itself. I do not know where we would be today if it didn't do that. Nor do I nor does the law look upon with disfavor peaceful picketing. Those are certain inalienable rights that people have, so long as they stay within the law and engage in peaceful picketing." (R. p. 376)

There is ample and sufficient evidence to support the convictions of all ten of the petitioners of violating Section 40-64 of the Code of Virginia. In *Cole* v. *Arkansas, supra*, this Honorable Court gave its approval to a state statute which prohibited persons acting in concert from assembling in an attempt to prevent by force or violence some other person from engaging in a lawful occupation. This Court held:

"Quite another question is involved when one is convicted of promoting, encouraging and aiding an assemblage the purpose of which is to wreak violence. Such an assemblage has been denominated unlawful by the Arkansas legislature, and it is no abridgment of free speech or assembly for the criminal sanctions of the state to fasten themselves upon one who has actively and consciously assisted therein." (338 U. S. at 353)

The respondent respectfully submits that there is sufficient evidence to show that each of the ten petitioners "actively and consciously assisted" in the threats, intimidation, and violence; and, therefore, there is no question of depriving the petitioners of due process of the law under the Fourteenth Amendment to the United States Constitution. The respondent prays that this Honorable Court will dismiss the petition of the petitioners on the ground that the decisions of the State courts below were based on a non-federal ground.

IV.

CONCLUSION

Wherefore, the respondent respectfully submits that, for the reasons stated, this Court does not have jurisdiction to review the decisions of the State courts below, since their decisions rest solely upon a non-federal ground, there being no federal question involved, and the respondent respectfully moves the Court to dismiss the petitioners' petition for writ of certiorari.

Respectfully submitted,

J. LINDSAY ALMOND, JR.
Attorney General of Virginia

C. F. HICKS
Assistant Attorney General of Virginia

May 10, 1956

APPENDIX A

Constitution of the United States

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Virginia Statute

(Code, 1950)

"§ 40-64. *Preventing persons from pursuing lawful vocations, etc.; illegal picketing; injunction.*—No person shall singly or in concert with others interfere or attempt to interfere with another in the exercise of his right to work or to enter upon the performance of any lawful vocation by the use of force, threats of violence or intimidation, or by the use of insulting or threatening language directed toward such person to induce or attempt to induce him to quit his employment or refrain from seeking employment.

No person shall engage in picketing by force or violence, or picket alone or in concert with others in such manner as to obstruct or interfere with free ingress or egress to and from any premises, or obstruct or interfere with free use of public streets, sidewalks or other public ways.

When a strike or lockout is in progress, no person who is not, or immediately prior to the time of the commencement of any strike or lockout was not, a bona fide employee of the business or industry being picketed shall participate in any picketing or any picketing activity with respect to such strike or lockout.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and punished accordingly.

Notwithstanding the punishments herein provided any court of general equity jurisdiction may enjoin picketing prohibited by this section, and in addition thereto, may enjoin any picketing or interference with lawful picketing when necessary to prevent disorder, restrain coercion, protect life or property, or promote the general welfare. (1946, p. 392; Michie Suppl. 1946, § 4711a; 1952, c. 674.)"

APPENDIX B

Judgment of the Circuit Court

VIRGINIA: IN THE CIRCUIT COURT FOR BRUNSWICK COUNTY

August 18, 1955

Commonwealth

vs.

Indictment for Felony and 2 Counts for Misdemeanor Case #5

James Barnes and Others

(Write All Names When Spread on Book)

This day came again the Attorney for the Commonwealth and came also James Barnes, Morgan Branson, Emmett Brown, Curtis Coleman, David Leon Cook, James Melvin Davis, E. R. Dougherty, Jr., Eddie Lewis Drummond, George Edmunds, Obediah Elder, Robert L. Elder, Robert T. Elder, Leon M. James, Pharoah Johnson, Waverly Kinchen, Osborne Marshall, John Merrit, Levi Merrit, Leroy Parham, Richard Peterson, John M. Price, Willie E. Price, Charlie Short, Rufus Smith, Ambrose (Ambress) Stith, Jr., Ambrose (Ambress) Stith, Sr., Cleveland Stith, Eugene Stith, Herbert Stith, Mark W. Stith, Solomon Stith, Jr., William B. Stith, Forrest Trotter, Melvin Trotter, George Hammack Sturdivant, Henry Tucker, William Tucker, W. I. Thomas, Roman Clarence Wyatt, Lester Williams and Hurley Yates, and came also counsel for the respective parties. And the Court having heard argument of counsel and having fully considered the evidence introduced on behalf of the Commonwealth and the defendants doth

find each of the defendants not guilty of the felony charge in the first count of the indictment and each of them are hereby discharged of the felony charged in said indictment and ordered to go thereof without day.

And the Court doth find the defendant Willie E. Price not guilty of the charge contained in the second and third counts of the said indictment, and accordingly he is ordered to go thereof without day.

And the court doth find the defendant E. R. Dougherty, Jr., guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $250.00 and confinement in jail for the term of six months. It is accordingly the judgment of the court that the said E. R. Dougherty Jr., be confined in the jail of this county for the term of six months and that the Commonwealth of Virginia do recover against the said E. R. Dougherty Jr., the sum of $250.00, the fine aforesaid in form aforesaid assessed together with its costs about its prosecution in this behalf expended.

And the Court doth find the defendant Eugene Stith guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in jail for the term of six months. It is accordingly the judgment of the court and the sentence of the court that the said Eugene Stith be confined in the jail of this County for the term of six months and the Commonwealth of Virginia do recover against the said Eugene Stith the sum of $50.00, the fine aforesaid in form aforesaid assessed together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant William B. Stith guilty as charged in the second count in said indictment and doth fix his punishment at a fine of $50.00 and confinement in jail for the term of six months. It is accordingly the judgment of the court and the sentence of the Court that the said William B. Stith be confined in the jail of this

County for six months and that the Commonwealth of Virginia, do recover against the said William B. Stith the sum of $50.00, the fine aforesaid in form aforesaid assessed together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant Ambrose (Ambress) Stith, Sr. guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in jail for the term of six months. It is accordingly the judgment of the Court and the sentence of the Court that the said Ambrose (Ambress) Stith, Sr. be confined in the jail of this county for the term of six months, and that the Commonwealth of Virginia do recover against the said Ambrose (Ambress) Stith, Sr. the sum of $50.00 the fine aforesaid in form aforesaid assessed together with its cost by it about its prosecution in this behalf expended.

And the Court doth find the defendant Ambrose (Ambress) Stith Jr., guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in the jail for the term of six months. It is accordingly the judgment of the court and the sentence of the Court that the said Ambrose (Ambress) Stith, Jr. be confined in the jail of this county for the term of six months and that the Commonwealth do recover against the said Ambrose (Ambress) Stith, Jr., the sum of $50.00 the fine aforesaid in form aforesaid assessed, together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant John M. Price, guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $250.00 and confinement in jail for the term of six months. It is accordingly the judgment of the court and the sentence of the Court that the said John M. Price be confined in the jail of this county for the term of six months and that the Commonwealth of

Virginia do recover against the said John M. Price the sum of $250.00, the fine aforesaid, in form aforesaid assessed, together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant Mark W. Stith guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in jail for the term of six months. It is accordingly the judgment of the court and the sentence of the court that the said Mark W. Stith be confined in the jail of this County for the term of six months and that the Commonwealth of Virginia do recover against the said Mark W. Stith the sum of $50.00, the fine aforesaid in form aforesaid assessed together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant Leroy Parham guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in jail for the term of six months. It is accordingly the judgment of the Court and the sentence of the Court that the said Leroy Parham be confined in the jail of this County for the term of six months and that the Commonwealth of Virginia do recover against the said Leroy Parham the sum of $50.00, the fine aforesaid, in form aforesaid assessed together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendant Cleveland Stith guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $250.00 and confinement in jail for the term of six months. It is accordingly the judgment of court and the sentence of the court that the said Cleveland Stith be confined in the jail of this county for the term of six months and that the Commonwealth of Virginia do recover against the said Cleveland Stith the sum of

$250.00, the fine aforesaid, in form aforesaid assessed together with its costs about it about its prosecution in this behalf expended in this Court.

And the Court doth find the defendant Curtis Coleman guilty as charged in the second count of said indictment and doth fix his punishment at a fine of $50.00 and confinement in the jail for the term of six months. It is accordingly the judgment of the court and the sentence of the court that the said Curtis Coleman be confined in the jail of this county for six months and that the Commonwealth of Virginia do recover against the said Curtis Coleman the sum of $50.00 the fine aforesaid, in form aforesaid assessed together with its costs by it about its prosecution in this behalf expended.

And the Court doth find the defendants James Melvin Davis, Obediah Elder, Robert L. Elder, Robert P. Elder, Pharoah Johnson, John Merrit, Levi Merrit, Rufus Smith, Herbert Stith, Solomon Stith, Jr., Melvin Trotter, W. I. Thomas, Lester Williams, James Barnes, Morgan Branson, Emmett Brown, Forrest Trotter, Hurley Yates, Eddie Lewis Drummond, George Edmonds, Leon M. James, Waverly Kinchen, Osborne Marshall, Richard Peterson, Charles Short, George H. Sturdivant, Henry Tucker, William Tucker, Roman Clarence Wyatt and David Leon Cook guilty as charged in the second count of said indictment and doth fix the punishment of each of them at a fine of $25.00 and confinement in jail for the term of three months. It is accordingly the judgment of the court that the Commonwealth of Virginia do recover against James Melvin Davis, Obediah Elder, Robert L. Elder, Robert T. Elder, Pharoah Johnson, John Merrit, Levi Merrit, Rufus Smith, Herbert Stith, Solomon Stith, Jr., Melvin Trotter, W. I. Thomas, Lester Williams, James Barnes, Morgan Branson, Emmett Brown, Forrest Trotter, Hurley Yates, Eddie Lewis Drummond, George Edmonds, Leon M. James, Waverly Kinchen,

Osborne Marshall, Richard Peterson, Charlie Short, George Hammack Sturdivant, Henry Tucker, William Tucker, Roman Clarence Wyatt and David Leon Cook the sum of $25.00 each, the fine aforesaid, in form aforesaid assessed against each of them, together with its costs by it about its prosecution in this behalf expended, and that the said James M. Davis, Obediah Elder, Robert L. Elder, Robert T. Elder, Pharoah Johnson, John Merrit, Levi Merrit, Rufus Smith, Herbert Stith, Solomon Stith, Jr., Melvin Trotter, W. I. Thomas, Lester Williams, James Barnes, Morgan Branson, Emmett Brown, Forrest Trotter, Hurley Yates, Eddie Lewis Drummond, George Edmonds, Leon M. James, Waverly Kinchen, Osborne Marshall, Richard Peterson, Charlie Short, George Hammack Sturdivant, Henry Tucker, William Tucker, Roman Clarence Wyatt and David Leon Cook be and they are each hereby sentenced to confinement in the jail of this county for the term of three months and that they and each of them remain in jail until said fine and costs be paid.

And it appearing to the court that it is compatible with public interest so to do, it is ADJUDGED AND ORDERED that execution of three months of the jail sentence of six months imposed upon Eugene Stith, William B. Stith, Ambrose (Ambress) Stith, Sr., Ambrose (Ambress) Stith, Jr., Mark W. Stith, Leroy Parham and Curtis Coleman, by the judgments aforesaid, be and the same is hereby suspended for a period of three years from this date, upon condition that they, and each of them, pay the fine and costs assessed against them, by the judgment aforesaid and upon further condition that they and each of them shall keep the peace, be of good behavior and not violate any of the laws of the State of Virginia or any political subdivision thereof, during said period of three years.

And it is further ordered that execution of the three months

jail sentence imposed by the judgment aforesaid against James Davis, Obediah Elder, Robert L. Elder, Robert T. Elder, Pharoah Johnson, John Merrit, Levi Merrit, Rufus Smith, Herbert Stith, Solomon Stith, Jr., Melvin Trotter, W. I. Thomas, Lester Williams, James Barnes, Morgan Branson, Emmett Brown, Forrest Trotter, Hurley Yates, Eddie Lewis Drummond, George Edmonds, Leon M. James, Waverly Kinchen, Osborne Marshall, Richard Peterson, Charlie Short, George Hammack Sturdivant, Henry Tucker, William Tucker, Roman Clarence Wyatt and David Leon Cook, be, and the same are hereby suspended for a term of three years from this date upon condition that they, and each of them, pay the fine and costs assessed against them by the judgment aforesaid and upon the further condition that they and each of them be of good behavior, keep the peace, and not violate any of the laws of the Commonwealth of Virginia or any political subdivision thereof during the term of three years.

Whereupon the defendants E. R. Dougherty, Jr., Eugene Stith, William B. Stith, Ambrose (Ambress) Stith, Jr., Ambrose (Ambress) Stith, Sr., John M. Price, Mark W. Stith, Leroy Parham, Cleveland Stith and Curtis Coleman, by counsel, moved the court to set aside the judgment entered against each of them on the grounds stated on yesterday in their motion to strike the evidence and on the further grounds that the accused are being denied their liberties under the due process clause of the 14th Amendment of the Constitution of the United States and the constitution of the State of Virginia, which motion the court doth overrule, and to the action of court in overruling said motion, each of said defendants, by their counsel, excepted.

And the defendants E. R. Dougherty, Jr., Eugene Stith, William B. Smith, Ambrose (Ambress) Stith, Sr., Ambrose (Ambress) Stith, Jr., John M. Price, Mark W. Stith, Leroy

Parham, Cleveland Stith, and Curtis Coleman, by counsel, having indicated their intention of applying to the Supreme Court of Appeals of Virginia for a writ of error to the judgments rendered against them, and each of them, on motion of said defendants, by their counsel, it is ordered that execution of the judgments pronounced against these said defendants be and the same is hereby suspended until October 25, 1955 in order that they may apply for a writ of error to the judgments rendered against them as aforesaid.

Whereupon E. R. Dougherty, Jr., together with George L. Nalls, his surety, who justified on oath as to his sufficiency acknowledged themselves indebted to the Commonwealth of Virginia in the sum of $1,000.00, upon condition that the said E. R. Dougherty, Jr., shall make his personal appearance before this court on October 25, 1955, at 10:00 o'clock A. M. to submit to the judgment of the Court and to abide such further action of the court in the premises as may be necessary and proper and in the meantime that the said E. R. Dougherty, Jr., shall keep the peace, be of good behavior and not violate any of the laws of the State of Virginia, or any of the political sub-divisions thereof and that he shall not depart without the leave of this court.

And the defendants Eugene Stith, William B. Stith, Ambrose (Ambress) Stith, Sr., Ambrose (Ambress) Stith, Jr., John M. Price, Leroy Parham, Cleveland Stith, and Curtis Coleman, together with George L. Nalls, their surety, who justified on oath as to his sufficiency, each jointly and separately recognized themselves to be indebted to the Commonwealth of Virginia for the sum of $500.00 each, upon condition that the said defendants and each of them shall make their personal appearance before this Court on October 25, 1955 at 10:00 o'clock A. M. and submit to the judgment of the Court and abide such further action of the court in the premises as may be necessary and proper, and

not depart without leave of court, and in the meantime to be of good behavior, keep the peace, and not violate any of the laws of the Commonwealth of Virginia, or any political subdivision thereof.

And the defendant Mark W. Stith not being in Court, on motion of his counsel he is allowed until August 22, 1955 to give a recognizance, with surety approved by the Clerk of this Court, in the sum of $500.00 for his appearance on October 25, 1955 to submit to the judgment of this Court etc.

And the Court doth find each of the defendants named in the third count of the indictment, they being the same persons whose names are set forth in the caption of this order, not guilty, of the misdemeanor charged in the third count of said indictment, and they, and each of them are hereby ordered to go thereof without day.

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A Copy Teste:

M. H. TURNBULL *Clerk*
By WILLIE B. ABERNATHY *Deputy Clerk*

APPENDIX C

Memorandum of Affirmance by the Supreme Court of Appeals

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday *the* 18th *day of* January, 1956.

The petition of E. R. Dougherty, Jr., Eugene Stith, William B. Stith, Ambrose Stith, Sr., Ambrose Stith, Jr., John M. Price, Mark Stith, Leroy Parham, Cleveland Stith and Curtis Coleman for a writ of error and supersedeas to a judgment rendered by the Circuit Court of Brunswick County on the 18th day of August, 1955, in a prosecution by the Commonwealth against the said petitioners for a felony and misdemeanors, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the Court being of opinion that the said judgment is plainly right, doth reject said petition and refuse said writ of error and supersedeas, the effect of which is to affirm the judgment of the said Circuit Court.

A Copy, Teste:

H. G. TURNER
Clerk

(SEAL)